MONTANA LEGISLATIVE HISTORY

Chapter 312 19 97

Bill H _____ S 201 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-20	✓ C	Hearing Date(s)	1-29	✓ C
	3-27	✓ C		1-30	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

CHAPTER NUMBER 259
EFFECTIVE DATE: 07/01/97

SB 199 INTRODUCED BY DOHERTY *LC0364 DRAFTER: MARTIN*

ALLOW AN INCOME TAX CREDIT FOR HOUSEHOLD AND DEPENDENT CARE SERVICES BASED ON THE INTERNAL REVENUE CODE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO TAXATION		
1/21	FISCAL NOTE REQUESTED		
1/22	FISCAL NOTE RECEIVED		
1/22	FISCAL NOTE PRINTED		
1/23	HEARING		
2/07	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL DIED IN COMMITTEE		

SB 200 INTRODUCED BY DOHERTY, ET AL. *LC0879 DRAFTER: PETESCH*

REQUIRE CONTRACTS FOR PRIVATIZATION OF STATE PROGRAMS, FUNCTIONS, OR SERVICES TO CONTAIN PROVISIONS PROTECTING THE PUBLIC RIGHT TO KNOW

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO BUSINESS & INDUSTRY		
2/07	HEARING		
2/12	TABLED IN COMMITTEE		
2/20	MOTION FAILED TO TAKE FROM COMMITTEE & PLACE ON 2ND READING	19	31
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE		

SB 201 INTRODUCED BY GLASER, ET AL. *LC0723 DRAFTER: MACMASTER*

PROVIDE FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
1/21	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/29	HEARING		
1/30	TABLED IN COMMITTEE		
2/13	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING	38	12
2/15	2ND READING PASSED AS AMENDED	46	4
2/17	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/20	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	81	19
4/04	3RD READING CONCURRED	81	18
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		

4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR CHAPTER NUMBER 312 EFFECTIVE DATE: 10/01/97		

SB 202 INTRODUCED BY GLASER, ET AL. *LC0722 DRAFTER: MACMASTER*

PROVIDE FOR A DEATH SENTENCE FOR A PERSON TWICE CONVICTED OF CERTAIN OFFENSES INVOLVING THE SALE OR BARTER OF, OR AN OFFER TO SELL OR BARTER, DRUGS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
1/21	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/29	HEARING		
1/30	TABLED IN COMMITTEE		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE		

SB 203 INTRODUCED BY NELSON, ET AL. *LC0639 DRAFTER: ERICKSON*

REQUIRE THE DEPARTMENT OF JUSTICE TO MAINTAIN AT LEAST ONE DRIVER'S LICENSE STATION IN EACH COUNTY OF THE STATE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE		

SB 204 INTRODUCED BY NELSON, ET AL. *LC0638 DRAFTER: ERICKSON*

REQUIRE THE DEPARTMENT OF JUSTICE TO SCHEDULE COMMERCIAL DRIVER'S LICENSE EXAMINATIONS IN A COUNTY IF PREVIOUSLY SCHEDULED THROUGH THE DEPARTMENT OF JUSTICE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/20	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/06	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	50	0
2/14	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/15	FIRST READING		
2/15	REFERRED TO TRANSPORTATION		
3/10	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/14	REVISED FISCAL NOTE RECEIVED		
3/14	REVISED FISCAL NOTE PRINTED		
3/15	2ND READING CONCURRED	97	1
3/17	3RD READING CONCURRED	99	1

INTRODUCED BY SB BILL NO. 201

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS 45-5-503 AND 46-18-303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. (Temporary) Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial

resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

45-5-503. (Effective July 1, 1997) Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310; or

(ii) if the court determines that the sentence of death cannot be imposed under 46-18-301 through 46-18-310, punished as provided in 46-18-219.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 2. Section 46-18-303, MCA, is amended to read:

"**46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation ~~which~~ that, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in ~~subsection (1)(a) of~~ 45-5-102 (1)(a), and the victim was a peace officer killed while performing ~~his~~ the officer's duty.

(7) The offense was aggravated kidnapping ~~which~~ that resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the

victim was less than 18 years of age.

(10) The offense was sexual intercourse without consent and the defendant has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent and the defendant inflicted serious bodily injury upon a person in the course of committing each offense."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0201, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for a death sentence for a person twice convicted of sexual intercourse without consent who inflicts serious bodily injury on the victim.

ASSUMPTIONS:
1. The Department of Justice (DOJ) is responsible for representing the state in all capital cases following the conviction and imposition of sentence. In addition, the DOJ frequently assists local prosecutors during trial and sentencing of cases in which the death sentence may be imposed. Currently, the DOJ is handling approximately seven death penalty cases. Of the seven, four of the cases were handled at the prosecution and/or sentencing level by the County Prosecutor Services Bureau. All appeals in state and federal courts have been handled by attorneys in the Appellate Legal Services Bureau.
2. Capital cases require a significantly greater investment of attorney time than other criminal cases, both in preparation for sentencing and in the appeals that follow. For example, in one death penalty case, approximately 1200 hours of attorney time were spent during the year in which the offender's first petition for post-conviction relief was filed in state district court. In another case--the only case in which the death penalty was carried out in recent history--attorneys spent over 700 hours during the final four weeks prior to the execution.
3. Because the investment of attorney time depends greatly on the facts and issues involved in the case, the impact to the DOJ cannot be predicted with certainty. It is assumed that a death sentence will be imposed in approximately one-half of the cases that qualify for a death sentence under the bill. Based on the figures provided by the Department of Corrections (DOC), it is assumed that one additional death sentence will be imposed during the next biennium if SB 201 is passed. The DOJ would likely absorb the additional workload with existing staff. (See technical note.)
4. The length of the appeal process in the most recent death sentence execution was 22 years, but the national average is significantly less.
5. A total of 9 offenders were re-convicted of 45-5-503, MCA, sexual intercourse without consent between fiscal years 1990-1995. The average time served for these offenders is 12.6 years.
6. The DOC assumes that this bill applies to offenses committed after 10/1/97.
7. Because of the length of the appeals process in death penalty cases, this bill would have no fiscal impact on the DOC in fiscal 1998 or 1999.
8. This legislation increases the availability of the death penalty. Therefore, the number of appeals from district court to the supreme court could increase.

FISCAL IMPACT:
The cost of appeals funded from the District Court Criminal Reimbursement Program (general fund statutory appropriation) may increase. This potential increase cannot be estimated.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Defense costs in capital cases are paid out of the district court reimbursement fund and, if funding runs out, by the counties. These costs will also increase.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
There may be long-range negative fiscal impact as the number of years of incarceration for these offenders could increase from 12.6 to an unknown number up to 22 years. The DOC would also incur the cost of execution.

TECHNICAL NOTES:
If HB 222 passes, it will require stricter time deadlines in capital cases. The DOJ has requested additional funding for implementing the deadlines required by HB 222, and the additional staff would be responsible for handling any capital cases that result from SB 201/202. However, if HB 222 passes and additional funds are not appropriated, the DOJ would not be able to handle any new capital cases with existing resources.

David Lewis 1/25/97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William E. Glaser 1/27/97
WILLIAM GLASER, PRIMARY SPONSOR DATE

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0201	1/20	1/29		TABLED ON 01/30 VOTE:		
SB0202	GLASER, BILL 1/20	1/29	DEATH PENALTY FOR 2ND CONVICTION OF CERTAIN DRUG OFFENSES	TABLED ON 01/30 VOTE:		
SB0205	MCNUTT, WALTER 1/21	1/30	ALLOW TRUTH AS AN ABSOLUTE DEFENSE IN CRIMINAL DEFAMATION	DO PASS VOTE: 10-0	1-30	1/30
SB0210	COLE, MACK 1/22	2/03	CRIMINALIZE REFUSAL TO TAKE DUI TESTS	TABLED ON 02/05 VOTE:7-3		
SB0212	MCNUTT, WALTER 1/22	1/30	REQUIRE JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY & AMT	PASS AS AMENDED VOTE: 10-0	2-6	2/08
SB0215	ECK, DOROTHY 1/24	2/06	MOBILE HOME EQUITY PROTECTION ACT	PASS AS AMENDED VOTE: 9-1	2-12	2/14
SB0216	VAN VALKENBURG, FRED 1/24	2/04	REVISE POSTCONVICTION RELIEF	PASS AS AMENDED VOTE: 10-0	2-4	2/05
SB0219	FRANKLIN, EVE 1/24	2/04	CREATING "PEEPING TOM" CRIMINAL OFFENSE	PASS AS AMENDED VOTE: 8-2	2-12	2/14
SB0222	GLASER, BILL 1/25	2/03	REVISE DANGEROUS DRUG AND DUI LAWS	DO PASS VOTE:6-4	2-5	2/06
SB0227	DOHERTY, STEVE 1/27	2/06	LIMIT RENT INCREASE ON SPACE IN MOBILE HOME PARK	TABLED ON 02/12 VOTE: 6-4		
SB0230	THOMAS, FRED 1/27	2/03	DISCIPLINE OF MEDICAL PROFESSIONAL ASSISTING IN A SUICIDE	TABLED ON 02/14 VOTE:6-4		
SB0231	EMERSON, C. A. 1/27	2/05	REFERENDUM FOR CONSTIT. AMENDMENT - CONTROL OF THE JUDICIARY	TABLED ON 02/17 VOTE:9-1		
	BENEDICT, STEVE		ESTABLISH ACCOUNTANT STATUTE OF LIMITATIONS			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SENATOR BRUCE D. CRIPPEN**, on January 29, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 43, posted January 23 1997
SB 201, SB 202, posted January 22, 1997
Executive Action: SB 48, SB 99, SB 79, SB 176

EXECUTIVE ACTION ON SB 48

Amendments: Prior executive session.

Motion: **SENATOR MIKE HALLIGAN MADE A MOTION THAT 48 DO PASS AS AMENDED.**

Discussion: **SENATOR HALLIGAN.** The assumptions have been dropped to zero.

Opening Statement by Sponsor: **REPRESENTATIVE PAUL BANKHEAD, HD 72, Heron.** HB 72 deals with felony escape, including in transit to or from a facility. It changes the definition of official detention to "in the custody of." If they are in custody for a felony, then it would be felony escape.

{Tape: 1; Side: A; Approx. Time Count: #59.9; Comments: None.}

Proponents' Testimony: **Diana Leibinger-Koch, Department of Corrections.** This bill is designed to prevent this vicious cycle from recurring. We have been trying to plug this hole since the 1980s. It includes any inmate in the custody of the Department or any inmate on furlough **(EXHIBIT #4)**.

Anyone who is in custody for a misdemeanor offense and escapes is guilty only of misdemeanor escape and/or eluding custody.

Christopher Miller, Powell County Attorney, Montana County Attorneys and John Conner, Department of Justice. Most escape cases are mine. I believe the bill will save time in the courts, will be easier for inmates to understand, and will have a good effect in any county dealing with such **(EXHIBIT #5)**.

Questions From Committee Members and Responses: **SENATOR STEVE DOHERTY.** If an individual was in custody and escaped, would it be a misdemeanor offense? **Diana Leibinger.** Yes, but if they had a weapon, then it would be aggravated felony escape. If any have a weapon, however, then it would be aggravated felony escape for them.

SENATOR DOHERTY. How many have escaped in the last five years when they were outside or on work assignment? **Christopher Miller.** About 20.

SENATOR DOHERTY. What percentage of those were outside the prison walls versus inside? **Christopher Miller.** A total of 250??? escapes in the past five years includes centers around the state. We haven't had a successful escape from inside for about seven years.

Closing by Sponsor: **REPRESENTATIVE BANKHEAD.** Clearly the Supreme Court has issued the Legislature a challenge. I want to thank the Committee for its kind consideration of this bill.

HEARING ON SB 201

Sponsor: **SENATOR WILLIAM GLASER, SD 8, Billings**

Proponents: **REPRESENTATIVE DEB KOTTEL, HD 45, Great Falls**

Opponents: **Betty Waddell, Montana Association of Churches**
Sharon Hoff, Montana Catholic Conference
Edward F. Sheehy, Jr., American Civil Liberties Union (ACLU)

Pastor Ken Moore, First Christian Church, Helena
Scott Crichton, Executive Director, ACLU of Montana

Opening Statement by Sponsor: **SENATOR WILLIAM GLASER, SD 8, Billings.** I didn't intend to elevate this situation to the level of a zoo, as has been done in prior years.

{Tape: 1; Side: A; Approx. Time Count: #73.2; Comments: None.}

This legislation says if someone is twice convicted of rape with seriously bodily injury to the victim, the Court has the option of the death sentence. The bill also applies to the same crime committed outside of Montana and then committed in Montana.

It provides a definition of rape with serious bodily injury. These criminals are hiding in closets and are not in public. Fifty percent of these predators are repeat offenders.

The Fiscal Note describes the bill. The average time served nationally for this crime is twelve years.

Proponents' Testimony: **REPRESENTATIVE DEB KOTTEL, HD 45, Great Falls.** The bill is not mandatory, but allows these offenses as consideration for a judge to allow the death penalty. Retribution means to equalize, to provide equity. If you are opposed to the death penalty in principle, there's nothing I can say.

There is more than one way to take a life or to tear the soul out of a person. Several years ago a man raped a six-month-old baby, and ripped her esophagus. Afterward that baby cringed whenever she heard a human voice.

People who have been raped might also have their throats cut or be beaten and left on the side of the road, and live through it. I am asking the Committee to give the Judiciary branch a tool to be used if a repeat offender commits crimes of such horrific nature that the death sentence seems appropriate.

Opponents' Testimony: **Betty Waddell, Montana Association of Churches** read from prepared testimony **(EXHIBIT #6)**. This bill discriminates against the poor and minorities, as average prosecution costs are about $200,000, and average defense costs are about $5,000. Miscarriages of justice are nearly impossible to fix. Approximately 38 convictions were wrong in the past decade. Kansas estimated that reinstatement of the death penalty would cost about $11.5 million per year. in Florida, the cost was $3,178,628 for each of 18 executions.

This legislation is morally wrong, it is discriminatory, it is expensive, and it may serve to promote violence.

Sharon Hoff, Montana Catholic Conference. A few years ago, two elderly women friends in Helena were raped. I don't believe the

death penalty is a appropriate response to any crime. Look at Texas.

Rape is a compulsive, violent crime. This is not a deterrent. It is hardly ever appropriate to use the death penalty. We can punish without death.

Edward F. Sheehy, Jr., American Civil Liberties Union (ACLU). The U.S. Supreme Court said those facing the death sentence must be represented by an attorney with capitol punishment experience. I am one of the few attorneys in Montana with this experience.

On it's face, the bill violates the Eighth Amendment, which prohibits cruel and unusual punishment "purposeless and needless form of pain and suffering". In Kober v Georgia, in a plurality opinion, the Court said it violated the Eighth Amendment and was grossly disproportionate to the crime.

We now have an effective means (since 1995) of punishing by allowing life imprisonment even for those convicted of rape for the first time. We also have prison without the possibility of parole for conviction of second offenses of rape.

Pastor Ken Moore, First Christian Church, Helena. What is appropriate retribution? We talked about the increased cost of the death penalty versus incarceration. In countries with execution, there has been a parallel of violence, even state by state in the United States.

Scott Crichton, Executive Director, ACLU of Montana, adding to Mr. Sheehy's comments. We stand for the rights of all, whether they are on the inside or the outside. Section 22 of the laws of the State of Montana, and the Eighth Amendment of the U.S. Constitution cover what is allowed as a responsibility concerning broadening and imposing the death sentence. We found that 90 percent of professional involved oppose the death sentence.

I noted that there are no professional criminologists present to testify in favor of this bill.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 10:57 a.m.}

Questions From Committee Members and Responses: **SENATOR MIKE HALLIGAN.** I am looking at the actual section at the bottom of page 2 of the bill. **REPRESENTATIVE GLASER.** If a person is convicted twice, then the death penalty option is available. This bill was drafted by John Macmaster, and if there are any inconsistencies in the bill, I would appreciate the opportunity to correct them. There is no exception for the age of the perpetrator. **REPRESENTATIVE KOTTEL.** Juveniles are not convicted of such crimes unless they are tried as an adult by petition. I see the error, and I believe it can be corrected.

SENATOR REINY JABS. Isn't it the purpose of the death penalty to remove perpetrators from threat to society?

SENATOR STEVE DOHERTY. If an individual were convicted of statutory rape, and did time, and then came to Montana, would that prior incident subject the individual to the death penalty? **REPRESENTATIVE KOTTEL.** Unless statutory rape is listed, it may not be a rape where serious bodily harm was inflicted. This bill allows prosecutors to say that some horrific crimes deserve the death penalty to be equitable to the crime.

SENATOR DOHERTY. With respect to Mr. Sheehy's testimony on certain cases, does that opinion say that after raping two times the death penalty is unconstitutional? **REPRESENTATIVE KOTTEL.** That decision says to me that the death penalty is not cruel and unusual. There is no guarantee of equity in the statutes. The Supreme Court quite clearly leaves open the door that the death penalty is not cruel and unusual in certain cases outside of homicide.

SENATOR DOHERTY. With regard to the comment that there are a number of ways to take a life other than death, if the grocery store clerk in Great Falls who was shot several times had died, that would have been a capitol offense. Now, under this bill, how would this apply? Where do we draw the line in that particular case? Should we be talking about capitol crimes to include these instances? **REPRESENTATIVE KOTTEL.** These are legislative policy decisions. Although I am not opposed to the death penalty, in no way is it appropriate to not impost it when people survive an attack terribly scarred. What if Bundy had never killed those 56 victims, but did everything else to them? I can't see how it would make a difference if those women didn't actually die. The death penalty is not equal in all cases, so it is left to the Judge and the jury.

CHAIRMAN CRIPPEN. What is the Association of Churches' position on partial-birth abortion? **Betty Waddell.** We have no position on that.

<u>Closing by Sponsor</u>: **SENATOR GLASER.** We need to read the definition of serious bodily injury; 45-2-101, MCA, 64(f) or (a), creates "a substantial risk of death."

Recently, in Yellowstone County, a young woman gave a ride to a man who then raped her and tried to kill her. She survived, but is disfigured by knife wounds. Another man broke and older woman's leg, beat her and her husband, and then took sexual advantage of her husband.

{Tape: 1; Side: B; Approx. Time Count: #27; Comments: 11:11 a.m..}

Additionally, a woman rented a room in her home to a man who turned out to be a sexual pervert and who took advantage of her

son. Her son is now impaired. I talked with him, and he has difficulty speaking with anyone.

I believe these crimes are more serious than murdering the victim. My granddaughters, both Catholic and Protestant, and are with me on this. A lobbyist told me his point of view was not being expressed here by the Montana Association of Churches. In the vigilante days, Mr. Plummer never robbed another coach or killed another person.

CHAIRMAN CRIPPEN. There is a bill to amend the section in questions, so we will check its status prior to executive action.

HEARING ON SB 202

Sponsor: **SENATOR BILL GLASER, SD 8, Billings**

Proponents: **REPRESENTATIVE BOB CLARK, HD 8, Ryegate**

Opponents: **Betty Waddell, Montana Association of Churches**
Sharon Hoff, Montana Catholic Conference
Edward F. Sheehy, Jr., American Civil Liberties Union (ACLU)
Pastor Ken Moore, First Christian Church, Helena
Scott Crichton, Executive Director, ACLU of Montana

{Tape: 1; Side: B; Approx. Time Count: #31; Comments: 11:14 a.m..}

Opening Statement by Sponsor: **SENATOR BILL GLASER, SD 8, Billings.** A more heinous crime is marketing drugs. Many years ago, I lived in Long Beach, California, where there were terribly high levels of crime from drugs sales and use.

You have the Fiscal Note before you. Six offenders were convicted of criminal sale of dangerous drugs in 1996, but average time in prison is one year.

This legislation is being presented to deal with the kingpins at the state level. The death penalty exists at the federal level now. Imprisonment isn't going to solve this problem.

Proponents' Testimony: **REPRESENTATIVE BOB CLARK, HD 8, Ryegate.** As a Highway Patrol Officer in Montana for 24-plus years, I saw the escalation of drugs moving through Montana. We are trying to stop the pipeline coming out of the South, the Southwest, and the West Coast, by showing drug traffickers we Montanans won't stand for this. If this bill passes legislative and constitutional muster, I believe it would do something toward payment of the ultimate price for this crime.

Opponents' Testimony: **Edward F. Sheehy, Jr., American Civil Liberties Union (ACLU).** I believe this bill would mean cruel and unusual punishment. No one yet has been charged under the

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 30, 1997, at 10:00 a.m., in Room 108.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: **SEN. LORENTS GROSFIELD**
SEN. SHARON ESTRADA

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 205, 01/22/97
SB 196, 01/22/97
SB 212, 01/23/97

Executive Action: SB 173, SB 172, HB 43, SB 196, SB 205, SB 178, SB 168, SB 201, SB 202

HEARING ON SB 205

Sponsor: **SEN. WALTER MCNUTT, SD 50, Sidney**

Proponents: **Riley Johnson, Montana Broadcasters Association**

Opponents: None

EXECUTIVE ACTION ON SB 201

Discussion: **SEN. HOLDEN** stated they had established a guideline that the death penalty can be given if the person caused the death of someone else.

Motion/Vote: **SEN. HALLIGAN MOVED SB 201 BE TABLED.**

Discussion: **CHAIRMAN CRIPPEN** clarified this bill would require the death sentence for sexual intercourse without consent.

SEN. HALLIGAN commented that they wanted to make sure criminals were treated with the highest sentence they could be given, but it costs about $3 million to prosecute appeals all the way to the United States Supreme Court and about a half a million to keep them in jail for 40 years.

Vote: Motion carried with **SEN. JABS** voting no.

EXECUTIVE ACTION ON SB 202

Motion: **SEN. HALLIGAN MOVED SB 202 BE TABLED.**

Discussion: **SEN. BISHOP** questioned whether the death penalty would be given in a kidnapping case where the victim was killed?

SEN. HALLIGAN stated it was on the list of serious offenses in which 20 to 40 years could be added.

CHAIRMAN CRIPPEN stated if they crossed state lines, it would become a federal offense and that would include the death penalty.

SEN. DOHERTY believed the victim had to die in either kidnapping or any of the major felony crimes before someone could be charged with a capital offense.

Vote: Motion carried with **SEN. JABS** voting no.

CHAIRMAN CRIPPEN stated that if this bill was brought out on the floor, he would move that it would be taken back to the committee for amendment.

EXHIBIT 3 - SEN. LORENTS GROSFIELD proxy votes.

HOUSE JUDICIARY

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

SB0138	FOSTER, MIKE		CHANGE REQMNT OF YRS OF PRACTICE & RESIDENCY FOR FULL TIME COUNTY ATTORNEYS			
	2/12	3/10		CONCUR	03/10 VOTE: 15-2	3/11
SB0141	MESAROS, KEN		CLARIFY CRIMINAL APPLICATION OF FISH & GAME VIOLATIONS			
	1/23	3/10		CONCUR	03/10 VOTE: 15-2	3/11
SB0142	JABS, REINY		CLARIFY APPEAL OF REVOCATION OF SUSPENDED SENTENCE BY JUSTICE OR CITY COURT			
	1/25	3/10		CONCUR	03/10 VOTE: 16-0	3/11
SB0145	BISHOP, AL		CLARIFY BAR AGAINST SUBSEQUENT PROSECUTION AFTER FORMER PROSECUTION			
	1/25	3/10		CONCUR	03/10 VOTE: 15-1	3/11
SB0158	ESTRADA, SHARON		CLARIFY LAWS RELATING TO QUALIFICATION OF SUBS FOR JUSTICES OF THE PEACE			
	1/25	3/11		CONCUR	03/11 VOTE: 15-0	3/11
SB0160	BARTLETT, SUE		NAME CHANGE ON SEALED RECORD BASIS TO PROTECT SAFETY OF PETITIONER			
	1/25	3/11		CONCUR AS AMENDED	03/11 VOTE: 17-0	3/11
SB0163	CHRISTIAENS, CHRIS		ALLOW MISDEMEANOR PLEAS & SENTENCING BY 2-WAY ELECTRONIC AUDIO-VIDEO COMM.			
	2/01	3/11		CONCUR	03/11 VOTE: 16-0	3/11
SB0167	BROOKE, VIVIAN		ALLOW VICTIMS OF ABUSE TO HAVE ADDRESS DELETED FROM PRECINCT REGISTER			
	1/27	3/12		CONCUR	03/24 VOTE: 16-1	3/25
SB0168	DOHERTY, STEVE		CREATE CRIMINAL OFFENSE OF DOMESTIC TERRORISM			
	2/08	3/12		TABLED ON 03/24	VOTE: 14-3	
SB0178	DOHERTY, STEVE		REVISE CRIMINAL SYNDICALISM - CHANGE TO CRIMINAL INCITEMENT			
	2/04	3/12		TABLED ON 03/27	VOTE: 13-5	
SB0197	GROSFIELD, LORENTS		CLARIFY AND TIGHTEN STANDARDS IN ADMINISTRATIVE PROCEDURE ACT			
	2/03	3/07		CONCUR	03/07 VOTE: 20-0	3/08
SB0201	GLASER, BILL		DEATH SENTENCE FOR 2ND RAPE WHERE SERIOUS BODILY INJURY WAS INFLICTED			
	2/21	3/20		CONCUR	03/27 VOTE: 13-6	3/27

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 20, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner
Rep. "Sonny" Hanson excused until 9:20 AM.
Rep. Linda McCulloch excused until 9:00 AM.

Members Absent: Rep. Duane Grimes absent until 10:30 AM.
Rep. Liz Smith absent until 8:40 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 201, SB 219, SB 263, SB 270
POSTED 3/6/97

HEARING ON SB 270

Opening Statement by Sponsor: SEN. STEVE BENEDICT
{Tape: 1; Side: A; Approx. Time Count: 0.1; Comments: This set of minutes is recorded on four 60-minute tapes.}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 8.8-Tape 2; Side A; 3.1}

Closing by Sponsor: SEN. FRANKLIN
{Tape: 2; Side: A; Approx. Time Count: 3.2}

HEARING ON SB 263

Opening Statement by Sponsor: SEN. AL BISHOP
{Tape: 2; Side: A; Approx. Time Count: 5.3}

Proponents' Testimony:

KRISTEN JURAS, Montana Bar, Legislative Committee EXHIBIT 5
{Tape: 2; Side: A; Approx. Time Count: 6.5}

SHERRY MEADOR, Supreme Court Assessment Program
{Tape: 2; Side: A; Approx. Time Count: 9.9; Comments: This proponent spoke to section 2 of the bill.}

BOB PYFER, Montana Credit Unions' League
{Tape: 2; Side: A; Approx. Time Count: 10.5; Comments: This proponent spoke to sections 3, 4, and 5 of the bill.}

DAVID DENNIS, General Counsel, D.A. Davidson Company
{Tape: 2; Side: A; Approx. Time Count: 14.0; Comments: This proponent spoke to section 7 of the bill.}

JOHN CADBY, Montana Bankers' Association
{Tape: 2; Side: A; Approx. Time Count: 18.8; Comments: This proponent did not sign in.}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 19.4-Tape 2;Side B; 15.6}

Closing by Sponsor: SEN. BISHOP
{Tape: 2; Side: B; Approx. Time Count: 15.7}

HEARING ON SB 201

Opening Statement by Sponsor: SEN. WILLIAM GLASER EXHIBIT 6
{Tape: 2; Side: B; Approx. Time Count: 16.9; Comments: The sponsor requested that the press not use the name of the victim referred to.}

Proponents' Testimony:

REP. DEB KOTTEL
{Tape: 2; Side: B; Approx. Time Count: 27.3}

Opponents' Testimony:

RONALD WATERMAN
{Tape: 3; Side: A; Approx. Time Count: 7.5}

WILLIAM HOOKS, Montana Appellate Defenders' Office
{Tape: 3; Side: A; Approx. Time Count: 14.2}

SHARON HOFF, Montana Catholic Conference EXHIBITS 7 & 7A
{Tape: 3; Side: A; Approx. Time Count: 21.1}

SCOTT CRICHTON, ACLU EXHIBITS 8 & 8A
{Tape: 3; Side: A; Approx. Time Count: 24,9}

BETTY WADDELL, Montana Association of Churches
{Tape: 3; Side: B; Approx. Time Count: 2.5; Comments: REP. WYATT assumed the chair.}

Questions From Committee Members and Responses: EXHIBIT 9
{Tape: 3; Side: B; Approx. Time Count: 11.8-Tape 4; Side A; 9.4 Comments: Part of question and answer period was lost due to a faulty tape which broke during REP. KOTTEL'S answers which are reflected, in part, in Exhibit 9.}

Closing by Sponsor: SEN. GLASER
{Tape: 4; Side: A; Approx. Time Count: 9.5}

MOTION/VOTE: **REP. McGEE moved to adjourn.** The motion carried by unanimous voice vote.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 27, 1997, at 8:30 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Hanson was excused until 10:00 AM.

Members Absent: Rep. Ahner was absent until 12 noon.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action:
TABLED: SB 178, SB 289, SB 320, SB 382
BE CONCURRED IN: SB 201, SB 329, SB 383
BE CONCURRED IN AS AMENDED: SB 369, SB 314, SB 263, SB 219, SB 283
SB 110 TO RECONSIDER - FAILED

EXECUTIVE ACTION ON SB 219

Motion: **REP. WYATT moved SB 219 BE CONCURRED IN.**
{Tape: 1; Side: A; Approx. Time Count: 2.5; Comments: This set of minutes is recorded on 60-minute tapes.}

Motion: **REP. CURTISS moved to amend SB 219 on page 1, line 24 and page 2, line 29 to strike "an official capacity" and insert "the course and scope of employment."**
{Tape: 1; Side: A; Approx. Time Count: 3.7}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 4.9}

Vote: The motion carried 17 - 0. REPS. AHNER, HANSON and GRIMES were absent for the vote and did not leave proxy votes.
{Tape: 1; Side: A; Approx. Time Count: 7.2}

Motion: **REP. BOHARSKI moved SB 219 BE CONCURRED IN AS AMENDED.**
{Tape: 1; Side: A; Approx. Time Count: 7.5}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.6}

Motion/Vote: **REP. BOHARSKI moved to table SB 219.** The motion failed by voice vote.
{Tape: 1; Side: A; Approx. Time Count: 17.1}

Vote: The motion to concur in SB 219 as amended carried 15 - 3; REPS. MC GEE, BOHARSKI and CLARK voting no. REPS. AHNER and HANSON were absent for the vote and did not leave proxy votes.
REP. HURDLE will carry SB 219.

EXECUTIVE ACTION ON SB 201

Motion/Vote: **REP. KOTTEL moved SB 201 BE CONCURRED IN.**
The motion carried 13-6. REPS. SANDS, ELLINGSON, SOFT, HURDLE, BOHARSKI and SMITH voting no. REP. HANSON voted aye by proxy. REP. AHNER was absent for the vote. **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 19.6 - 24.7; Comments: (REP. SMITH changed her original vote from yes to no without objection from the committee and expressed her reasons for the change.}

EXECUTIVE ACTION ON SB 178

Motion: **REP. WYATT moved SB 178 BE CONCURRED IN.**
{Tape: 1; Side: A; Approx. Time Count: 26.0}